IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

M/s. Mahadev Prasad Parmeshwarlal & Ors. Vs. M/s.Ashok Kumar Murarilal

S.B. CIVIL FIRST APPEAL No.98/1988 against the judgment & decree dated dated 27.7.1988 passed by the District Judge, Jhunjhunu in Civil Suit No.26/1984.

Date of Judgment :: October 13, 2006

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. G.P. Kaushik for the appellants.
Mr. Anil Mehta for the respondent.

BY THE COURT:

1. This appeal is by the defendant directed against the judgment and decree dated 27.7.1988 in Civil Suit No.26/1984.

2. The plaintiff firm M/s. Ashok Kumar Murarilal, a registered partnership firm filed the suit in question for recovery of money on account of sale of cloth to the defendant firm M/s. Mahadev Prasad Parmeshwarlal, Khetri vide invoice dated 15.1.1982 for Rs.2646/-, invoice dated 28.1.1982 for Rs.4,000/- and invoice dated 3.3.1982 for Rs.2340/-, totaling to Rs.8996/- along with interest at the rate of 18% per annum.

3. The learned trial court on the basis of pleadings of the parties framed the following issues:-

(1) Whether the defendant firm is a firm and defendant Nos.2 & 3 are its owners (plaintiff)?

(2) Whether the defendant firm purchased on credit cloth on 15.1.82 of Rs.2646/-, on 28.1.82 of Rs.4,000/- and on 3.3.82of Rs.2340/- total Rs.8996/-?

(3) Whether the defendant firm agreed to pay interest at the rate of Rs.1.50 per hundred per month and whether this was tradition in the market of Jhunjhunu ?

(4) Whether the defendant firm owes a sum of Rs.12,800/- towards principal and interest to the plaintiff as stated in para 8 of the plaint (plaintiff) ?

(5) Whether the defendant No.2 is entitled to grant of installments in case a decree is granted against him, and if so, in what manner ?

(6) Relief ?

4. Learned counsel for the appellant-defendant firstly contended that the learned trial court has erred in not framing any issue on whether the defendant firm was a registered partnership firm or not and whether any suit could lie against it but when learned counsel for plaintiff-respondent pointed out that Section 69 of the Partnership Act only requires that the plaintiff firm has to be a registered partnership firm in order to maintain the suit in accordance with Section 69 of the Act, learned counsel for the appellant could not press this point any further. Accordingly, the maintainability of

suit was not questioned by the learned counsel for the appellant.

5. Learned counsel for the appellant then submitted that in the statement of Pw.1 Rajendra Prasad, the partner of the plaintiff firm in his cross examination had himself admitted that the transactions of selling cloth with the defendant firm had commenced only w.e.f. 3.3.1982 and on Ex.2 bill also there was no signature of the purchaser, therefore, no decree could be passed in favour of the plaintiff on the basis of the aforesaid three invoices and the appeal deserve to be allowed.

6. As against this, learned counsel for the respondent-plaintiff submitted that since there were three invoices in question which were not paid by the defendant firm and one of the bills was also the credit bill for Rs.2340/- dated 3.3.1982, therefore, the aforesaid statement of Pw.1 Rajendra Prasad in his cross examination is only with regard to that particular invoice and that cannot amount to the admission that prior to the said date there were no credit purchases by the defendant firm and he further submitted that in the examination in chief the said Pw.1 Rajendra Prasad has clearly stated the sale of cloth on all the three aforesaid dates to the defendant firm. He further urged that the trade practice does not

require the invoice to be counter signed by the purchaser and since sale of cloth and its delivery to the defendant firm was not in dispute, the decree passed by the learned trial court deserved to be upheld and the present appeal was liable to be dismissed.

7. Having heard the learned counsel and upon perusal of the impugned judgment and record of the case, this Court is inclined to agree with the contentions raised on behalf of the respondent plaintiff and this first appeal deserves to be dismissed.

8. Since there is no dispute that the cloth under the invoices in question was sold to the defendant firm and delivery thereunder was taken by it, mere averment in the cross examination of partner of the plaintiff firm that credit transaction commenced from 3.3.1982 does not *ipso facto* disprove the prior credit sales. Since there is a separate invoice of the said date 3.3.1982 also, the said averment of the Pw.1 Rajendra Prasad has to be considered only with respect that particular invoice and that does not *per se* deny existence of other credit sales to the defendant firm. It is further true that mere absence of signatures on the credit invoices by the defendant or any of its partner does not mean that the goods in question were not sold to the defendant or money thereunder was

not due to the plaintiff firm. Since the plaintiff firm has maintained its books of accounts in regular course of business which was produced as evidence before the learned trial court as Ex.5, 6 & 7, there is no reason to disbelieve such credit sales to the defendant firm and the decree passed against defendant firm for recovery of the said amount under the credit purchase made by it is not liable to be upset by this Court. As far as interest is concerned, in view of the prevailing trade practices as given out by Pw.1 Rajendra Prasad in the statement also before the learned trial court, the said rate of interest of 18% per annum also deserves to be given to the plaintiff. Therefore, this Court finds no infirmity in the judgment and decree passed by the learned trial court.

9. Consequently, this appeal being devoid of merit and the same is hereby dismissed. No order as to costs.

(Dr. VINEET KOTHARI), J.

VS/